



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 9, 1996

Ms. Judith A. Hunter
City Attorney's Office
City of Georgetown
P.O. Box 409
Georgetown, Texas 78627-0409

OR96-0683

Dear Ms. Hunter:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. That request was assigned ID# 38803.

The City of Georgetown (the "city") received an open records request for an offense report prepared by the city police department, regarding investigation of damage to the requestor's vehicle. You contend that the information submitted should be withheld from disclosure, pursuant to section 552.108, of the Government Code because the city police department "is maintaining an open file to continue investigating the incident." We have examined the information submitted to us for review.

Section 552.108 excepts from required public disclosure the following information:

- (a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure].
- (b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from [required public disclosure].

Traditionally, when applying section 552.108, this office distinguishes between cases that are still under active investigation and those that are closed. Open Records Decision No. 611 (1992) at 2. In cases that are still under active investigation, section 552.108 excepts from disclosure all information except that generally found on the first

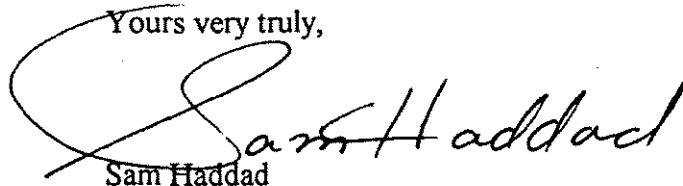
page of an offense report. Open Records Decision No. 127 (1976). In *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177, 186-87 (Tex. Civ. App.-Houston [14th Dist.] 1975), writ *ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976), the court identified certain types of information which are public. Although this information is generally found on the first page of an offense report, its location is not determinative. To determine what information must be released, the type of information must be examined rather than where it is located. See Open Records Decision No. 127 (1976) at 5.

Section 552.108 is generally applicable while the case is being investigated until it is closed through prosecution or through administrative decision. Attorney General Opinion MW-446 (1982) at 2. In closed cases, however, the governmental body must demonstrate that release of the information would unduly interfere with law enforcement or prosecution before it can withhold the information under section 552.108. Open Records Decision Nos. 518 (1989), 216 (1978) at 4.

As you indicate that this is an ongoing investigation, all but the first page offense report information may be withheld from disclosure. The city must release the type of information specifically held to be public in *Houston Chronicle* and Open Records Decision No. 127 (1976) (see attached summary). We note that the document submitted to this office and labeled as Exhibit B, pages 1 and 2, contains the type of information generally found on the first page of an offense report. The requestor is entitled to a detailed description of the incident pursuant to *Houston Chronicle* and Open Records Decision No. 127 (1976), however, the other information may be withheld.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in dark ink, appearing to read "Sam Haddad", is written over a large, stylized circular flourish.

Sam Haddad
Assistant Attorney General
Open Records Division

SH/ch

Ref.: ID# 38803

Enclosures: Submitted documents
Summary of Open Records Decision No. 127

cc: Mr. David Shawn Sprinkel
11660 Huebner No. 404
San Antonio, Texas 78230
(w/o enclosures)



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 9, 1996

Ms. Barbara E. Roberts
City Attorney
City of Galveston
P.O. Box 779
Galveston, Texas 77553-0779

OR96-0684

Dear Ms. Roberts:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. That request was assigned ID# 38866.

The City of Galveston (the "city") received an open records request for records pertaining to the city police department's investigation of a purported suicide. You contend that the files may be withheld from the public because the "Police Department is still investigating this case." We infer from this statement that you seek to withhold the requested information pursuant to section 552.108 of the Government Code, the "law enforcement" exception.

The city received a request for "copies of the offense report, the autopsy report, ballistic and chemical tests." You have submitted to this office, as responsive to the request, only copies of some of the police investigation records. We note that you did not submit an autopsy report, nor ballistic and chemical test reports, to this office. Since autopsy reports are expressly made public under section 11, article 49.25 of the Code of Criminal Procedure, an autopsy report may not be withheld from disclosure. *See* Open Records Decision No. 529 (1989).

As for the remaining documents, section 552.108 excepts from required public disclosure the following information:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime

....

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution

You assert that the requested reports and police investigation records submitted to this office are excepted from disclosure pursuant to section 552.108. When applying section 552.108, this office distinguishes between cases that are still under investigation and those that are closed. Open Records Decision No. 611 (1992) at 2. In cases that are still under active investigation, section 552.108 excepts from disclosure all information except that generally found on the first page of an offense report. Open Records Decision No. 127 (1976). Section 552.108 is applicable while the case is being investigated until it is closed through prosecution or through administrative decision.¹ Attorney General Opinion MW 446 (1982) at 2. In closed cases, however, the governmental body must demonstrate that release of the information would unduly interfere with law enforcement or prosecution before it can withhold the information under section 552.108. Open Records Decision Nos. 518 (1989), 216 (1978) at 4.

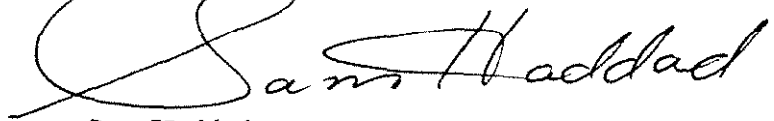
In *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177, 186-87 (Tex. Civ. App.--Houston [14th Dist.] 1975), writ ref'd n.r.e. per curiam, 536 S.W.2d 559 (Tex. 1976), the court identified certain types of information which are public. Although this information is generally found on the first page of an offense report, its location is not determinative. To determine what information must be released, the type of information must be examined rather than where it is located. See Open Records Decision No. 127 (1976) at 5.

As you indicate that this is an ongoing investigation, all but the first page offense report information may be withheld from disclosure. Accordingly, except for those categories of information specifically held to be public in *Houston Chronicle* and Open Records Decision No. 127 (1976) (see attached summary), the city may at this time withhold the requested information in its entirety pursuant to section 552.108. Of course, since section 552.108 is discretionary with the governmental body claiming the exception, the city also may choose to voluntarily release the information. Gov't Code § 552.352; Open Records Decision No. 216 (1978) at 2.

¹We note, however, that if a final determination is made that the death in question was a suicide, this would appear to close the case.

under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in cursive script, reading "Sam Haddad". The signature is written in black ink and is positioned above the printed name and title.

Sam Haddad
Assistant Attorney General
Open Records Division

SH/ch

Ref.: ID# 38866

Enclosures: Submitted documents
Summary of Open Records Decision No. 127

cc: Ms. Oktavia Carstarphen
Attorney at Law
P. O. Box 2568
Galveston, Texas 77553
(w/o enclosures)